

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)**

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| ASHLEY MCNEAL, | : | Case No. 3:23-cv-00013 |
| | : | |
| Plaintiff, | : | District Judge Thomas M. Rose |
| | : | Magistrate Judge Caroline H. Gentry |
| vs. | : | |
| | : | |
| SERENE HOME HEALTH SERVS., <i>et</i> | : | |
| <i>al.</i> , | : | |
| | : | |
| Defendants. | : | |

ORDER VACATING REPORT AND RECOMMENDATION

On February 5, 2024, the undersigned Magistrate Judge issued a Report and Recommendation (Doc. No. 27) finding that the continued failure of Defendant Serene Home Health Services, LLC (“Defendant Serene”) to obtain counsel warranted the imposition of default judgment. The undersigned therefore recommended that the Court enter default judgment against Defendant Serene pursuant to Rule 55 of the Federal Rules of Civil Procedure. (*Id.* at PageID 230.)

The undersigned has since become aware of persuasive authority suggesting that default judgment may be inappropriate at this time. *See Noboa v. Toron Restoration Corp.*, No. 14-CV-00730, 2015 WL 1672815, at *5 (E.D.N.Y. March 26, 2015) (collecting cases regarding propriety of default judgment while potential opt-in plaintiffs have yet to join class action). In light of this additional authority, the undersigned finds that the earlier Report and Recommendation was improvidently issued.

Accordingly, the undersigned Magistrate Judge hereby **VACATES** previously issued Report and Recommendation.

IT IS SO ORDERED.

/s/ Caroline H. Gentry
Caroline H. Gentry
United States Magistrate Judge